

REMARKS

Claims 52-69 were pending in this Application as of the Office Action of March 17, 2009. Claims 70-84 are added herewith. Claims 52, 58, 68, and 69 are amended. Claims 53-55 are cancelled. An RCE entering this Response is also submitted herewith.

Objections to the claims

Claim 68 is objected to for alleged informalities. Applicant respectfully asserts that the above amendments to claim 68 overcome these informalities.

Claim Rejections Under 35 U.S.C. §112 first paragraph

Claims 52-68 are rejected for allegedly not complying with the written description requirement. Specifically, the Examiner alleges the “distinguishing criterion” recited in claims 52 and 68 are not disclosed in the Specification. While Applicant respectfully disagrees with this rejection, Applicant respectfully asserts that the above amendments render the rejection moot.

Claim Rejections Under 35 U.S.C. §102(b)

Claims 52-59, 62, 63, 65, and 67-68 are rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 6,669,477 to Ober (hereinafter “Ober”). Applicant respectfully traverses the rejections.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicant’s claim 52 recites, *inter alia*,

“said apparatus is designed to be individually adaptable in said set-up mode, wherein a normally occurring muscle activity and a maximal muscle activity are measured and registered and used to calculate a threshold value for outputting of the feedback signal, whereby a criteria is established for releasing a feedback to the user in such a manner that the criteria is adapted to the user,” and

claim 68 similarly recites *inter alia*;

“during a set-up mode:

measuring and registering a normally occurring muscle activity and a maximal muscle activity, and

using said registered muscle activities to calculate a threshold value for outputting of the feedback signal, whereby a criteria is established for releasing a feedback to the user in such a manner that the criteria is adapted to the user.”

Ober does not teach an apparatus or method that measures and registers muscle activity in set-up mode or calculates a threshold value for outputting a feedback signal. On the contrary, Ober teaches provision of threshold value adjustment via a manual control knob 32. Thus, the Ober threshold value can only be manually adjusted by a person. In response to the Examiner’s previous assertion that the threshold adjustment disclosed in Ober (column 3, lines 8-12) inherently discloses use of a set-up mode, Applicant respectfully notes that in order to adjust the threshold value on the basis of a normally occurring muscle activity and maximal muscle activity, the manual adjuster must be provided with information of values or levels of muscle activities in order to calculate a threshold value. Since there is no teaching in Ober to suggest that these muscle activities are performed, measured, and registered, such a provision of this value/level information cannot (an do not) occur in the teaching of Ober. Even if, *pro arguendo*, the user were to perform a normally occurring muscle activity and/or maximal muscle activity during an alleged set-up mode, there is no implicit or explicit disclosure in Ober that would suggest measuring and registering of muscle activities.

In summary, Applicant respectfully asserts that Ober does not teach measurement and registration of muscle activity in a set-up mode (as is required by Applicant's claims), performance of predefined muscle activities by the user (as is implicitly required by Applicant's claims), calculation of a threshold (as is required by Applicant's claims), or a connection between an individual adaptation of the threshold value and the user (as is required by Applicant's claims).

For at least the above reasons, Applicant respectfully asserts that Ober does not teach every element of Applicant's claims 52 and 68, and thus does not anticipate claims 52-59, 62, 63, 65, and 67-68.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 60, 61, 64, 66, and 69 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ober in view of various combinations United States Patent No. 6,636,763 to Junker (hereinafter "Junker"), United States Patent No. 4,993,423 to Stice (hereinafter "Stice"), United States Patent No. 5,368,043 to Sunouchi (hereinafter "Sunouchi"), and United States Patent No. 6,306,100 to Prass (hereinafter "Prass"). Applicant respectfully traverses the rejections.

Applicant respectfully notes that claims 60, 61, 64, 66, and 69 depend from claims 52 and 68. As such, for at least the reasons discussed in the 102 remarks, Ober does not teach every element of claims 60, 61, 64, 66, and 69. Since none of Junker, Stice, Sunouchi, or Prass taken alone or in combination remedy the deficiencies of Ober, any proposed combination of Ober, Junker, Stice, Sunouchi, and Prass does not teach every element of Applicant's claims 60, 61, 64, 66, and 69. Thus, Applicant respectfully asserts that claims 60, 61, 64, 66, and 69 are not obvious over any proposed combination of Ober, Junker, Stice, Sunouchi, and Prass. Further, as any proposed combination of Ober, Junker, Stice, Sunouchi, and Prass does not teach every element of Applicant's claims, combination or modification of the above references would not be obvious, or offer any reasonable chance of success.

Conclusion

All of the objections and rejections are herein overcome. In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. No new matter is added by way of the present Amendments and Remarks, as support is found throughout the original filed specification, claims and drawings. Prompt issuance of Notice of Allowance is respectfully requested.

The Examiner is invited to contact Applicant's attorney at the below listed phone number regarding this response or otherwise concerning the present application.

Applicant hereby petitions for any necessary extension of time required under 37 C.F.R. 1.136(a) or 1.136(b) which may be required for entry and consideration of the present Reply.

If there are any charges due with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys.

Respectfully submitted,

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